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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/000,262	11/28/2001	Edward Anthony Bezek	CFLAY.00075	9131

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CARSTENS YEE & CAHOON, LLP
P O BOX 802334
DALLAS, TX 75380

EXAMINER

BECKER, DREW E

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 07/30/2003

4

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/000,262

Applicant(s)

BEZEK ET AL.

Examiner

Drew E Becker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☒ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Oath/Declaration

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because: the declaration does not refer to parent applications 09/906,458 and 09/538,540.

Priority

2. The current status of all nonprovisional parent applications referenced should be included. Specifically, the status of the parent applications listed on page 1 of the specification.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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4. Claims 1-26 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-35 of U.S. Patent No. 6,472,007 in view of Andrzejczak [Pat. No. 5,987,913]. It would have been obvious to one of ordinary skill in the art to include a cup within the cap, in view of Andrzejczak, since Andrzejczak teaches that containers housed within other containers were commonly known.

5. Claims 1-26 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-31 of U.S. Patent No. 6,596,328 in view of Kirshenbaum et al [Pat. No. 4,051,265]. It would have been obvious to one of ordinary skill in the art to incorporate the outer layer of Kirshenbaum et al since the outer layer of Kirshenbaum et al provided an effective oxygen barrier and thus better preserved the beverage (abstract).

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. Claim 1 recites a receptacle "for holding" a first product and a removable cap which is "adapted for holding" a second product. It is not clear whether the first and

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second products are part of the claimed product, or whether the container must merely be "capable" of holding them.

9. Claim 8 recites "for holding product". It is not clear whether this refers to the first or second product.

10. Claim 14 recites a receptacle "for holding" a food product and a removable cap "for holding" a promotional item. It is not clear whether the food product and promotional item are part of the claimed product, or whether the container must merely be "capable" of holding them.

11. Claim 20 recites "for holding product". It is not clear whether this refers to the food product.

12. Claim 26 recites the limitation "said second end". There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

13. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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14. Claims 1-3, 8-11, 14, and 20-23 are rejected under 35 U.S.C. 102(e) as being anticipated by Miller [Pat. No. 6,474,494].

Miller teaches a portable container comprising a cylindrical receptacle for holding a first product (Figure 1, #18), a removable cap over a first end of the receptacle which acts as a bowl (Figure 1, #14), a removable seal (Figure 1, #12), the cap containing promotional products such as chips and dip (column 4, line 44), the receptacle containing a beverage (column 4, line 18), the receptacle having a hand grip (Figure 1), and a collar (Figure 1, #14BB).

15. Claims 1-3, 8-10, 13-15, 20-22, and 25 are rejected under 35 U.S.C. 102(e) as being anticipated by Lee et al [Pat. No. 6,068,865].

Lee et al teach a portable container comprising a cylindrical receptacle for holding a first product (Figure 1, #30), a removable cap over a first end of the receptacle which was capable of acting as a bowl when inverted (Figure 1, #20), a removable seal (Figure 1, #32), the cap containing promotional products such as chocolate (Figure 2, #24), the receptacle containing yoghurt (Figure 2, #34), the receptacle having a shape that provided a hand grip (Figure 1, #30), the cap having a collar or rim (Figure 1, #20), and the cap being transparent (column 6, line 30).

16. Claims 1-3, 8-12, 14-15, and 20-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Le Rose [Pat. No. 2,076,132].

Le Rose teaches a portable container comprising a generally cylindrical receptacle for holding a first product (Figure 1, #7), a removable cap over a first end of the receptacle which was capable of acting as a bowl when inverted (Figure 1, #15), a removable seal

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(Figure 2, #13), the cap containing promotional products such as ice cream (column 2, line 16), the receptacle containing soda (column 1, line 7), the receptacle having a shape that provided a hand grip (Figure 1, #9), the cap having a collar (Figure 1, #19), and the cap having a lip which engaged a groove in the receptacle (column 2, line 25).

17. Claims 1, 3-4, and 8-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Nava et al [Pat. No. 6,070,752].

Nava et al teach a portable container comprising a generally cylindrical receptacle for holding a first product (Figure 1, #8), a removable cap over a first end of the receptacle which was capable of acting as a bowl when inverted (Figure 1, #10), the cap containing promotional products such as CD's (Figure 2, #16), the receptacle containing soda (Figure 1, #9), the receptacle having a shape that provided a hand grip (Figure 1, #8), and the cap having a collar or rim (Figure 1, #23).

Claim Rejections - 35 USC § 103

18. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

19. Claims 5-7 and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Le Rose as applied above, in view of Kirshenbaum et al [Pat. No. 4,051,265].

Le Rose teaches the above mentioned components. Le Rose does not teach an outer layer which carries graphics and provides an oxygen barrier. Kirshenbaum et al teach a

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container and cap with an outer layer which provided an oxygen barrier (Figure 1, #14; abstract), as well as the use of graphics (column 5, lines 50-62). It would have been obvious to one of ordinary skill in the art to incorporate the outer layer of Kirshenbaum et al into the invention of Le Rose since both are directed to beverage containers, since Le Rose already included a sealed container with a water barrier (Figure 2, #13), and since the outer layer of Kirshenbaum et al provided an effective oxygen barrier and thus better preserved the beverage (abstract). It would have been obvious to one of ordinary skill in the art to include graphics on the outer layer of Kirshenbaum et al since Kirshenbaum et al already included graphics on the container itself (column 5, lines 50-62), since outer layers commonly included graphics, and since graphics on the outer layer would have made the product more distinctive looking and set it apart from its competitors.

20. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Le Rose as applied above, in view of Nava et al.

Le Rose teaches the above mentioned components. Le Rose does not teach the promotional item being a prize, toy, coupon, ball, contest item, or collectible. Nava et al teach a portable container comprising a generally cylindrical receptacle for holding a first product (Figure 1, #8), a removable cap over a first end of the receptacle which was capable of acting as a bowl when inverted (Figure 1, #10), and the cap containing a contest item such as CD's (Figure 2, #16). It would have been obvious to one of ordinary skill in the art to incorporate the contest item of Nava et al into the invention of Le Rose since both are directed to beverage containers, since Le Rose already

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included a cap which contained a promotional item (Figure 1, #15), and since the contest item of Nava et al would have improved the consumer's desire to purchase the product due to their chance of winning a prize.

21. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Le Rose as applied above, in view of Howes [Pat. No. 5,076,433].

Le Rose teaches the above mentioned components. Le Rose does not teach a promotional item attached to a second end of the receptacle. Howes teaches a container comprising a promotional item attached to a second end of the receptacle (Figure 1, #21). It would have been obvious to one of ordinary skill in the art to incorporate the bottom attached promotional item of Howes into the invention of Le Rose since both are directed to beverage containers, since Le Rose already included an additional product attached to the first end (Figure 2, #16), since consumers greatly valued promotional items such as prizes, and since the bottom promotional item of Howes has the advantage of providing a prize, while being completely indistinguishable from a non-prize bearing container (column 2, lines 39-48).

22. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Mayusovsky et al [Pat. No. 5,310,072], Andrzejczak [Pat. No. 5,987,913], Bezek et al [Pat. No. 6,472,007], Jeng [Pat. No. 5,180,079], Reidinger et al [Pat. No. 6,311,860], Bezek et al [Des. 452,823], Schmidt et al [Pat. No. 4,794,008], and Nava et al [Pat. No. 6,299,014] teach containers with multiple receptacles.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 703-305-0300. The examiner can normally be reached on Monday-Thursday 8am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1495.



Drew E Becker
Examiner
Art Unit 1761

July 23, 2003